

## UNITED STATES DISTRICT COURT

SOUTHERN

District of

NEW YORK

REX JONES,

Plaintiff,

## SUMMONS IN A CIVIL ACTION

-against-

THE CITY OF NEW YORK, POLICE OFFICER  
LUIS ORTIZ (Shield 1133, Tax ID 934038, 43<sup>rd</sup>  
Precinct), and JOHN DOES 1-5,

Defendants.

CASE NUMBER:

08 CV 4618

JUDGE KOEHL

TO: (Name and address of Defendant)

POLICE OFFICER LUIS ORTIZ  
(Shield 1133, Tax ID 934038)  
43<sup>RD</sup> POLICE PRECINCT  
900 FTELEY AVENUE  
BRONX, NY 10472

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

JOEL BERGER  
360 LEXINGTON AVENUE, 16<sup>th</sup> FL.  
NEW YORK, NY 10017-6502

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an answer to the complaint which is served on you with this summons, within \_\_\_\_\_ days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

(By) DEPUTY CLERK

MAY 19 2008

DATE

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SOUTHERN DISTRICT OF NEW YORK**

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Plaintiff,

-against-

**THE CITY OF NEW YORK, POLICE OFFICER  
LUIS ORTIZ (Shield 1133, Tax ID 934038, 43<sup>rd</sup>  
Precinct), and JOHN DOES 1-5,**

Defendants.

## RETURN OF SERVICE

[illegible]

**JOEL BERGER** declares, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am the attorney for the plaintiff in the above-captioned action. I was admitted to practice before the United States District Court for the Southern District of New York on April 23, 1970, and before the courts of the State of New York on December 23, 1968.

2. On July 28, 2008, pursuant to Fed. R. Civ. P (4) (e) (1) and New York CPLR § 308 (2), I personally served the Summons and Complaint in the above-captioned action upon Police Officer Luis Ortiz (Shield 1133, Tax ID 934038) by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to Officer Ortiz at his current actual place of business, the 43<sup>rd</sup> Police Precinct, 900 Fteley Avenue, Bronx, NY 10473-4006, in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served.

3. Police Officer Ortiz was previously served pursuant to Fed. R. Civ. P. 4 (e) (2) (C) on May 20, 2008, by delivery of the Summons and Complaint to a person of suitable age and discretion at his actual place of business, *i.e.*, the desk officer of the 43<sup>rd</sup> Police Precinct, a person authorized by appointment by New York City Police Department Patrol Guide 211-21 to accept service for him. A Return of Service to that effect was filed with the

Court electronically on May 21, 2008, with hard copy being mailed to the Clerk's Office that same day. This additional Return of Service is being filed as a precaution because defendant Ortiz, although filing and serving an Answer on July 25, 2008, has alleged as an affirmative defense in that Answer (¶50) that service upon him was "insufficient" and his counsel has advised the undersigned that the reason for said allegation is defense counsel's belief that service of process had to be effectuated by mail as well as by delivery to the desk officer at the Precinct. The service by mail described in ¶ 2, above, together with the service accepted by the desk officer of the 43<sup>rd</sup> Police Precinct on May 20, 2008, leaves no doubt that defendant Ortiz has now been served appropriately.

4. This Return of Service is being filed with the Clerk designated in the Summons within 20 days of the service by mail described in ¶ 2 above, as required by New York CPLR § 308 (2), which states that proof of service shall be filed with said Clerk within 20 days of either delivery or mailing, "whichever is effectuated later."

Dated: New York, New York  
July 28, 2008



JOEL BERGER (JB-3269)